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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,013	11/20/2000	Keunsuk P. Chang	361752000500	7915
25227	7590	01/21/2005		
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102				
			EXAMINER FERGUSON, LAWRENCE D	
			ART UNIT 1774	PAPER NUMBER

DATE MAILED: 01/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/715,013

Applicant(s)

CHANG ET AL.

Examiner

Lawrence D. Ferguson

Art Unit

1774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.  
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 24-46 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-13, 15 and 25-40 is/are rejected.  
7) ☒ Claim(s) 14, 16-20, 41-44 and 46 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. This action is in response to the amendment mailed March 8, 2004.

Claims 1, 3, 16, 25 and 27-20 were amended rendering claims 1-20, 24-44 and 46 pending.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-13, 15 and 25-40 of provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of copending Application No. 10/270,734. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both include a laminate film comprising a polyolefin resin layer having a discharge treated surface and

Art Unit: 1774

a metal layer having an optical density deposited on said discharge treated surface of said polyolefin resin layer, wherein the discharge treated surface is formed in an atmosphere of  $\text{Co}_2$  and  $\text{N}_2$  and has a barrier durability at 9% elongation of 46.5  $\text{cc/m}^2/\text{day}$  oxygen transmission rate. Application No. 10/270,734, does not explicitly teach the polyolefin resin layer comprising at least 0.3% nitrogen functional groups. Although Application No. 10/270,734 does not explicitly teach the nitrogen percent in the polyolefin layer in instant claim 1, instant claim 13 of the copending Application teaches nitrogen in the polyolefin resin layer, where the percentage is an optimizable feature. It would have been obvious to one of ordinary skill in the art to optimize the components because discovering the optimum range involves only routine skill in the art. The nitrogen percentage directly affects the barrier properties of the film. *In re Aller* 105 USPQ 233 and see *In re Boesch*, 617 USPQ 215.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 14, 16-20, 41-44 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art does not teach or suggest the recited laminate film further including a second polyolefin resin layer comprising additives that enhance metal adhesion or metal formation. The prior art does not teach motivation or suggestion for modification to make the invention as instantly claimed.

5. There remains a double patenting rejection of copending Application No. 10/270,734 in this case. The closest prior art does not disclose a metal layer having an optical density of at least about 2.6 deposited on the discharge treated surface of the polyolefin resin layer or the laminate film having a barrier durability at 9% elongation. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

### ***Response to Arguments***

6. Provisional rejection made under 35 U.S.C. 103(a) as being obvious over copending Chang U.S. 2003/0082390 which has a common inventor with the instant application is withdrawn due to Applicant's arguments.

Rejections made under 35 U.S.C. 103(a) as being unpatentable over Nagai et al. (U.S. 6,106,933) ; Nagai et al. (U.S. 6,106,933) in view of Kurokawa et al., (U.S. 5,698,317); of Kurokawa et al., (U.S. 5,698,317) further in view of Tanizaki et al., (U.S. 5,998,039) and Nagai et al. (U.S. 6,106,933) in view of Yokoyama et al., (U.S. 5,939,205) in view of Akao et al, (U.S. 5,492,741) are withdrawn because the reference does not disclose a metal layer having an optical density of at least about 2.6 deposited on the discharge treated surface of the polyolefin resin layer or the laminate film having a barrier durability at 9% elongation.

The obviousness-type double patenting rejection of copending Application No. 10/270,734 is maintained because Applicant failed to argue the rejection. Therefore, the rejection is maintained for reasons of record.

**7. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Conclusion***

**8.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.


Art Unit: 1774

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lawrence Ferguson  
Patent Examiner  
AU 1774



RENA DYE  
SUPERVISORY PATENT EXAMINER  
A-U. 1774 11/18/05